Section 6.0	**Policies & Procedures**	5/19/2003 - Effective
Subject	**Department Operations**	1/18/2008- Reviewed
		1/18/2008 - Revised
Policy 6.1	**Guardianship Process for Incapacitated Adult Patients**	Care Management - Author

Guardianship Process for Incapacitated Adult Patients

Policy

The following procedure shall be used when temporary or permanent guardianship is required for an incapacitated adult patient (See IHOP 9.3.17). A court appointed guardian is needed for decision-making on or responsibility for post-hospital care either because the patient has no family or other person who may consent in his/her behalf (in accordance with IHOP 9.3.17), or those persons who may consent refuse to accept responsibility for decision-making for the patient.

Procedure

- When the need for a guardian is suspected because of apparent impaired decision-making capacity or incapacitation, the Department of Behavioral Health Consult & Liaison Service shall be consulted for an assessment of the patient's mental capacity.
- The patient's physician will complete the Doctor's Capacity Assessment (DCA). The care manager may assist in the completion of the document, but the physician who is responsible for the accuracy of the information must sign it. The physician, if not a psychiatrist evaluating the patient's capacity, may use the information documented by the psychiatrist in the medical record as a resource. This physician need not be faculty. The DCA must be updated every 120 days.
- The completed original DCA shall be placed in the patient's medical record. A copy will be sent to the Galveston County Probate Court and Galveston County Social Services.
- The following shall be attached to the DCA:
  - Patient's current face sheet
  - A list of names, addresses, and telephone numbers of all individuals contacted requesting assumption of responsibility for decision-making for the patient.
  - Any arrangements made for placement of the patient upon discharge and pending assignment of a guardian (e.g. long term care facility, personal care home).

If the patient has no source of funding, either temporarily or permanently, and placement is indicated, the care manager should refer the case to the assistant director, via their team leader.

Attachments: Doctor's Capacity Assessment
Guardianship Referral

DOCTOR'S CAPACITY ASSESSMENT

Date: _____

Physician's Name: _____

Physician's Address: _____

_____

Telephone Number: _____

Judge Gladys Burwell
600 59th Street, Ste. 2305
Galveston, TX 77551-4180

Re: _____, Proposed Ward

Date of Birth: _____

Dear Judge Burwell:

1. I am a physician currently licensed in the State of Texas. I have been the doctor for _____ since _____.

2. I have examined _____ (Proposed Ward) on _____, 20_____ at the following location:
_____
_____
.

3. Prior to the examination the Proposed Ward was informed that the communications with me would NOT be privileged. Yes_____ No_____.

For the purposes of this examination, the following definition applies:

An "Incapacitated Person" is an adult individual who, because of a physical or mental condition, is substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own financial affairs.

Based upon that examination and my observations, my opinion is as follows:

4. What is the General Nature and Degree of the Incapacity?

_____
_____
_____
_____

5. What is the patient's medical history as it is related to the incapacity?

_____
_____
_____
_____

6. Physical Diagnosis:

_____
_____
_____
_____
_____
_____
_____

Prognosis:

_____
_____
_____
_____

Severity: Mild_____ Moderate_____ Severe_____

Treatment:

_____
_____
_____
_____
_____
_____
_____

7. Mental Diagnosis:

_____
_____
_____
_____
_____
_____
_____

Prognosis:

_____
_____
_____
_____

Severity: Mild_____ Moderate_____ Severe_____

Treatment:

_____
_____
_____
_____
_____
_____

8. Is the Proposed Ward able to make or communicate responsible decisions concerning himself or herself? Yes_____ No_____

9. Does any current medication affect the demeanor of the Proposed Ward? Yes___ No___

If Yes, would this medication affect the ability of the Proposed Ward to participate fully in a court proceeding? Yes_____ No_____

Briefly, please describe these medications:

_____
_____
_____
_____

10. Is dementia a diagnosis of the Proposed Ward's incapacity? Yes_____ No_____

If Yes, please describe the precise physical and mental conditions underlying the diagnosis of dementia.

_____
_____

11. Is mental retardation the basis of Proposed Ward's incapacity? Yes_____ No_____

12. If mental retardation is the basis of the Proposed Ward's incapacity, did you examine the Proposed Ward in accordance with the rules adopted by the Texas Department of Mental Health and Mental Retardation? Yes_____ No_____ (See Exhibit A).

13. It is my opinion that the Proposed Ward is incapable/capable of making a decision concerning the following as indicated by a mark before the appropriate letter.

MATTERS RELATED TO THE PROPOSED WARD'S PROPERTY:

Capable	**Incapable**	
_____	_____	a. to handle a bank account
_____	_____	b. to contract and incur obligations
_____	_____	c. to collect and file suits on debs, rentals, wages, and other claims due the Proposed Ward;
_____	_____	d. to pay, compromise, and defend claims against him/herself;
_____	_____	e. to apply for or consent to governmental sources;
_____	_____	f. to apply for and to receive funds from governmental sources;
_____	_____	g. to enroll in public or private residential care facilities;
_____	_____	h. to make employment decisions;
_____	_____	i. to make decisions related to military service;
_____	_____	j. to enter into insurance contracts of every nature;
_____	_____	k. to vote;
_____	_____	l. to enter into marriage or a marriage agreement
_____	_____	m. to operate a motor vehicle;
_____	_____	n. to participate in the selection of residential placement;
_____	_____	o. to handle funds of $ _____ or less;
_____	_____	p. to hire an attorney;
_____	_____	q. other

1._____

2._____

MATTERS RELATED TO THE PROPOSED WARD'S PERSON

Capable	Incapable	
_____	_____	a. to apply for psychological and psychiatric tests for evaluation;
_____	_____	b. to consent to medical and dental treatment and testing;
_____	_____	c. to consent to disclosure of psychological and medical records
_____	_____	d. other

1._____

2._____

THEREFORE, (answer YES to one of the following):

_____ It is my opinion that the Proposed Ward is **partially incapacitated** and the court should consider the appointment of a guardian.

_____ It is my opinion that the Proposed Ward is **totally without capacity** and the court should consider the appointment of a guardian.

(OR)

_____ It is my opinion that the Proposed Ward has **full capacity** and the Court need not consider the appointment of a guardian.

14. If you have any remarks concerning other sections, or if you believe the Court should also be aware of other concerns about the Proposed Ward which are not included above, please explain:

_____
_____
_____
_____
_____
_____

Sincerely,

_____
Physician's Signature

_____

Printed Name

PHYSICIAN'S AFFIDAVIT
SUPPORTING MENTAL STATUS EXAMINATION

STATE OF TEXAS '
'
COUNTY OF GALVESTON '

On this day, _____, personally appeared before me, the
(Name of Physician)
undersigned notary public, and after I administered an oath to him/her, upon his/her oath, stated as follows:

AI have personally examined _____, Proposed Ward, and completed the mental status examination form. The facts in it are within my personal knowledge and are true and correct.

_____
Physician's Signature

_____
Printed Name

SWORN TO and SUBSCRIBED before me by _____ on the _____ day of _____, 20_____.

_____
Notary Public in and for the State of Texas

(SEAL)

08/2005

Exhibit A

TEXAS HEALTH & SAFETY CODE

' 593.003 Requirement of Determination of Mental Retardation

(a) Except as provided by Sections 593.027, 593.0275, and 593.028, a person is not eligible to receive mental retardation services unless the person first is determined to have mental retardation.

(b) This section does not apply to an eligible child with a developmental disability receiving services under Subchapter A, Chapter 535.

' 593.004 Application for Determination of Mental Retardation

A person believed to be a person with mental retardation, the parent if the person is a minor, or the guardian of the person may make written application to the department, a community center, a physician, or a psychologist licensed to practice in this state or certified by the department for a determination of mental retardation using forms provided by the department.

' 593.005 Determination of Mental Retardation

(a) A physician or psychologist licensed to practice in this state or certified by the department shall perform the determination of mental retardation. The department may charge a reasonable fee for certifying a psychologist.

(b) The physician or psychologist shall base the determination on an interview with the person and on a professional assessment that, at a minimum, includes:

(1) a measure of the person=s intellectual functioning;
(2) a determination of the person=s adaptive behavior level; and
(3) evidence of origination during the person=s developmental period.

(c) The physician or psychologist may use a previous assessment, social history, or relevant record from a school district, public or private agency, or another physician or psychologist if the physician or psychologist determines that the assessment, social history, or record is valid.

(d) If the person is indigent, the determination of mental retardation shall be performed at the department=s expense by a physician or psychologist licensed in this state or certified by the department.

' 593.006 Report

A person who files an application for a determination of mental retardation under Section 593.004 shall be promptly notified in writing of the findings.

Guardianship Referral

TO: Galveston County Probate Court

Please note that this must accompany the original completed, notarized doctor's capacity assessment. ***Complete the below and any additional information to the extent possible to the Galveston County Probate office at 600 59th Street, Ste. 2305, Galveston, Texas, 77551, Phone: 409-770-5188, Fax No. (409) 765-3221.***

Proposed Ward's Name (& AKA): _____

Social security #: _____ DOB: _____

Medicare #: _____ Medicaid #: _____ Other #: _____

Current Location (Name and address): _____

Admission date: _____ Prior address: _____

Reason for referral of guardianship (brief summary of current situation):

_____

_____

Attending doctor name and contact info: _____

Care Manager's name and contact info: _____

Financial Income Source(s) & Amounts:_____

Claim #s for each income: _____

Family member or interested party names and contact info:

_____

_____

_____

_____

Advanced Directive Status: _____ First language: _____